

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON
NEW YORK
SAN FRANCISCO
LONDON
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August 23, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.;
Petition for Designation as an Eligible Telecommunications Carrier in the State
of New York; Petition for Forbearance, CC Docket No. 96-45
Ex Parte Communication*

Dear Ms. Dortch:

TDS Telecommunications Corp. (TDS Telecom)¹ submits this *ex parte* communication in response to the Reply Comments of TracFone Wireless, Inc. (TracFone) in the above-referenced proceeding. TDS Telecom filed initial comments opposing the TracFone Petitions² on the grounds that (1) TracFone is not entitled to forbearance from the statutory requirement that eligible telecommunications carriers (ETCs) provide supported services at least partially using their own facilities, (2) TracFone's prepaid wireless service does not meet the eligibility requirements for universal service support, and (3) the public interest would not be served by granting TracFone ETC status in the requested rural service areas.³ TracFone's Reply Comments propose to modify its ETC Petition to seek universal service support only for Lifeline service (and not for service to high-cost areas).⁴ TracFone contends that, through this change, "it

¹ TDS Telecom is the parent company of rural local exchange carriers (RLECs) Deposit Telephone Company, Edwards Telephone Company, Oriskany Falls Telephone Company, Port Byron Telephone Company, Township Telephone Company, and Vernon Telephone Company in New York (collectively, the TDS RLECs). The area in which TracFone seeks ETC designation encompasses the rural service areas served by the TDS RLECs.

² See Petition, *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New York*, CC Docket No. 96-45 (filed June 8, 2004, Public Notice rel. June 24, 2004) (ETC Petition); Petition for Forbearance, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed June 8, 2004, Public Notice rel. June 24, 2004) (Forbearance Petition) (collectively, the Petitions).

³ See Consolidated Comments of TDS Telecommunications Corp. on TracFone Wireless Petitions for Forbearance and ETC Designation, CC Docket No. 96-45 (July 26, 2004) (TDS Telecom Comments).

⁴ Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, at 2-3 (Aug. 9, 2004) (Reply Comments).

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has alleviated the concerns of those parties who filed oppositions to its petitions.”⁵ TDS Telecom disagrees. For the following reasons, TDS Telecom continues to urge the Commission to deny the TracFone Petitions.

The Communications Act and the Commission’s Rules Do Not Permit TracFone to Narrow the Scope of its Requested ETC Designation as Proposed in the Reply Comments.

In its recent Report and Order and Further Notice of Proposed Rulemaking in the *Lifeline/Link-up* proceeding, the Commission denied a request by AT&T to modify the rules governing ETC designation to permit carriers to receive Lifeline and Link-Up support (Low Income Support) even if they do not meet the statutory requirements to be designated as an ETC to serve high-cost areas.⁶ TracFone apparently believes that this decision does not apply to its ETC Petition, asserting that no “rule change is needed to designate TracFone as an ETC solely for participation in Lifeline” and that the Commission may simply attach “a condition . . . to [TracFone’s] ETC designation limiting its ETC status to receipt of universal service funds to support its Lifeline program.”⁷

TracFone’s proposal seeks to accomplish just what the Commission refused to allow in the *Lifeline/Link-Up Order* – to draw Low Income Support from the Universal Service Fund without satisfying the Section 214(e) requirements for ETCs serving high-cost areas. The Reply Comments do not refute the comments describing TracFone’s ineligibility for ETC designation in high-cost areas; TracFone argues simply that its acceptance of a condition limiting its receipt of universal service support to Lifeline services “obviates all of the concerns raised in those comments.”⁸ That statement is incorrect. The *Lifeline/Link-Up Order* makes clear that the proposed “Lifeline only” condition does *not* “obviate” the need for TracFone to satisfy all the

⁵ *Id.* at 3.

⁶ AT&T asserts that the *Lifeline/Link-Up Order* misunderstood or misconstrued AT&T’s request. While the *Order* “declines to establish rules that would provide Lifeline/Link-Up support directly to carriers that are not ETCs,” *see* Report and Order and Further Notice of Proposed Rulemaking, *Lifeline and Link-Up*, WC Docket No. 03-109, FCC 04-87, ¶ 54 (rel. Apr. 29, 2004) (*Lifeline/Link-Up Order*), AT&T contends that it sought rule changes that would permit carriers to seek separate certification (pursuant to separate requirements) as an ETC for purposes of receiving Low Income Support only. Petition of AT&T Corp. for Limited Reconsideration, WC Docket No. 03-109, at 1 (July 21, 2004) (Lifeline Recon Petition). Regardless of how the decision is characterized, however, the fact is that AT&T sought, and the Commission rightly denied a request, to authorize carriers to receive Lifeline support where they are unable to satisfy all the statutory (and state regulatory) requirements for designation as an ETC. The Commission correctly concluded that Section 254(e) of the Communications Act permits payment of universal service support only to carriers that are designated as ETCs pursuant to Section 214(e) of the Act (which requires, *inter alia*, that ETCs provide all supported services throughout the designated service area), and that providing Low Income Support to carriers that fail to meet all the requirements for ETC designation under Section 214(e) could “serve as a disincentive for other carriers to comply with their ETC obligations.” *Lifeline/Link-Up Order* ¶ 54. AT&T has sought reconsideration of this conclusion, but the Commission has not yet addressed the petition.

⁷ Reply Comments at 3 n.4.

⁸ *Id.* at 1.

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requirements of Section 214(e) before it can be designated an ETC. TracFone does not meet those requirements.

TracFone Does Not Meet the Statutory Requirements for Designation as an ETC.

Section 214(e)(1) of the Act requires any carrier seeking designation as an ETC to provide all the supported services throughout the requested service area using its own facilities or a combination of its own facilities and resold services.⁹ TracFone acknowledges that it does not satisfy the requirement to use at least some of its own facilities to provide supported services, but requests forbearance from this requirement. For the reasons set forth in TDS Telecom's initial comments, the forbearance test has not been met because, *inter alia*, the public interest would not be served by granting the requested forbearance.¹⁰ The Reply Comments do not effectively refute the arguments in the TDS Telecom Comments, and the Commission accordingly should deny the TracFone Forbearance Petition and find that TracFone does not meet the eligibility requirements for ETC designation.¹¹

TracFone also does not satisfy the Section 214(e)(1) requirements to provide *all* the supported services *throughout* the designated service areas. As noted in the TDS Telecom Comments, TracFone's prepaid wireless service does not provide toll limitation,¹² a requirement for both ETC designation *and* Lifeline service.¹³ The Reply Comments simply skip this issue,

⁹ 47 U.S.C. § 214(e)(1)(A).

¹⁰ TDS Telecom Comments at 2-8.

¹¹ TracFone argues that concerns about "double recovery" of universal service support by pure resellers do not apply to wireless resellers because the underlying facilities-based providers are not required as a matter of law to pass through any universal service support they receive to their wholesale customers. Reply Comments at 9 n.14. But TracFone acknowledges that "it has a choice of vendors from whom to purchase [wholesale] service." Reply Comments at 11. Under those market conditions, wholesale providers have an incentive to offer competitive prices that closely reflect their costs of providing service. Where those costs are reduced by the receipt of universal service support, the price paid by reseller customers should similarly be reduced. Accordingly, there remains a real risk that wireless resellers could, at least under some circumstances, enjoy a double recovery of universal service support if the Commission allowed them to recover support directly from the Fund. See TDS Telecom Comments at 7-8.

The Reply Comments also do not address the concerns set forth in the TDS Telecom Comments about the *overall impact* on the Universal Service Fund of granting the requested forbearance from the facilities requirement. TracFone asserts that its proposal to limit its recovery of universal service support to Lifeline service will reduce the impact of its ETC designation on the Universal Service Fund. Reply Comments at 11. In fact, this proposal means that the TracFone Petitions now propose rule changes that would allow *two* new categories of carriers to seek universal service support from the Fund – pure wireless resellers *and* carriers that cannot satisfy the Section 214(e) requirements to serve high-cost areas but could meet a subset of requirements applicable to Lifeline service providers. As noted in the TDS Telecom Comments, the Commission should not be *expanding* the classes of carriers eligible to draw from the Fund at the same time it is considering alternatives to control the growth of the Fund. See TDS Telecom Comments at 5-7.

¹² TDS Telecom Comments at 9-11.

¹³ See 47 C.F.R. §§ 54.101(a)(9) (requiring provision of toll limitation as part of supported services to rural and high-cost areas), 54.401(a)(3) (requiring provision of toll limitation as part of Lifeline service).

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and it remains a problem with the prepaid wireless Lifeline service described in the Reply Comments.

TracFone's proposed Lifeline service would offer consumers 250 minutes of prepaid wireless calling time for \$25. The minutes "could be used for local or long distance calling" and would be available "until the purchased quantity was depleted."¹⁴ Because TracFone customers cannot limit their use of these minutes to basic local communications, a TracFone "Lifeline" customer could place *or receive* long distance calls that rapidly deplete the allotted minutes,¹⁵ leaving the customer with no access to service until he or she purchases additional minutes. Although the Reply Comments state that TracFone handsets will allow 911 calling even for customers that have no prepaid minutes available,¹⁶ connectivity to other local services (such as a parent's ability to receive calls from a child's school) would be unavailable until additional prepaid minutes are purchased. This is inconsistent with the Commission's and consumers' expectations for a "lifeline" basic local telecommunications service.¹⁷ Because TracFone cannot offer its Lifeline customers a service that ensures that long distance usage does not interfere with access to local services, it does not provide all the elements of a "supported service" and thus is ineligible for ETC designation. Indeed, this type of inferior "lifeline" offering could harm the public interest by diluting the benefit of nearly universal connectivity that "lifeline" service historically has offered.

TracFone's Reply Comments also do not refute the argument that TracFone has failed to show that it can (or within a reasonable time will) provide service throughout the service areas in which it seeks ETC designation. In the recent *Virginia Cellular* and *Highland Cellular* decisions granting ETC designation to wireless carriers, the Commission examined detailed information submitted by the petitioning carriers about the scope of their network facilities, future build-out plans, and procedures for responding to customer requests for service to confirm each carrier's commitment to serving the entire area in which it sought ETC designation.¹⁸ Because TracFone does not operate its own facilities, it cannot and does not

¹⁴ Reply Comments at 4.

¹⁵ Under the "called party pays" system for wireless calling in the United States, wireless customers use allotted minutes (or pay per-minute rates) for calls they receive as well as those they place.

¹⁶ Reply Comments at 10. This feature is apparently available only to customers using handsets purchased from TracFone.

¹⁷ See Fourth Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 13 FCC Rcd 5318, 5388-89 (1997) ("[W]e believe that requiring carriers to provide at least one type of toll-limitation service is sufficient to provide low-income consumers a means by which to control their toll usage *and thereby maintain their ability to stay connected to the public switched telephone network.*") (emphasis added). See also TDS Telecom Comments at 10-11.

¹⁸ See, e.g., Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338, ¶¶ 15-16, 23 (rel. Jan. 22, 2004) (*Virginia Cellular*); Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Highland Cellular, Inc Petition for Designation as an*

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provide this type of information in the ETC Petition or the Reply Comments.¹⁹ Accordingly, TracFone has not shown that it satisfies the obligation in Section 214(e)(1) to provide the supported service (even just its Lifeline service) throughout all the service areas in which it seeks ETC designation.

The Public Interest Would Not be Served by Designating TracFone as an ETC.

TracFone's proposal could have a substantial impact on the Universal Service Fund, and yet its Reply Comments fail to address the profound public interest concerns raised as a result. TracFone suggests that its proposal to limit its recovery of universal service support to Lifeline service will reduce the impact of its ETC designation on the Universal Service Fund.²⁰ However, the broader impact of the proposal, taken together with the Forbearance Petition, means that the TracFone Petitions now propose changes to the universal service rules that would allow *two* new categories of carriers – pure wireless resellers *and* carriers that cannot satisfy the Section 214(e) requirements to serve high-cost areas but could meet a subset of requirements applicable to Lifeline service providers – to draw support from the Universal Service Fund. As noted in the TDS Telecom Comments, the Commission should not be *expanding* the classes of carriers eligible to draw from the Fund at the same time it is considering alternatives – some quite drastic – to control the growth of the Fund.²¹

* * * * *

(continued...)

Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, FCC 04-37, ¶¶ 16-17 (rel. Apr. 12, 2004) (*Highland Cellular*).

¹⁹ TracFone has not offered any evidence that its underlying vendors provide comprehensive and reliable wireless coverage throughout the areas in which it seeks ETC designation, nor have those underlying carriers made any such showing in connection with their own petitions for ETC designation. Although TracFone claims that it can obtain service from another vendor if it identifies service problems with one of its facilities-based providers, Reply Comments at 11, it has not shown that vendors are available covering the entire area, with no gaps in coverage, in which it seeks ETC designation.

²⁰ Reply Comments at 11.

²¹ See TDS Telecom Comments at 5-7.

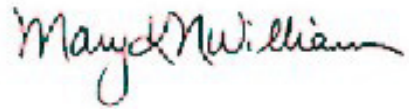
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For the reasons set forth here and in the TDS Telecom Comments, TDS Telecom urges the Commission to deny the TracFone Petitions. Although TracFone's prepaid wireless service may offer some benefits to transient, low-income consumers, it does not meet the eligibility requirements for universal service support. Moreover, the public interest would not be served by expanding the categories of carriers entitled to receive universal service support at a time when the Commission is considering a variety of alternatives to control the growth of the Universal Service Fund.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORP.

A handwritten signature in blue ink, reading "Mary Newcomer Williams".

By: Gerard J. Waldron
Mary Newcomer Williams
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel.: (202) 662-6000
Fax: (202) 662-6291

Attorneys for TDS Telecom